

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

VIANOR TIRE AND AUTO

DECISION OF THE HEARING OFFICER

Appearances: Brad W. Wilder Esq., Attorney for the Employer

Nature of Dispute: RSA 275:44 IV liquidated damages

Employer: Vianor Tire and Auto, PO Box 624, Essex Junction, VT 05453

Date of Hearing: July 1, 2014

Case No. 47997

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on April 24, 2014. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on June 5, 2014. The request is for \$1,800.00 in liquidated damages.

The claimant testified that he worked for the employer for one year and three months. He was in a salaried position. He was terminated from his position and not paid in the 72 hour time frame. The claimant believes that the employer was willful and did not have good cause for late payment. He explained that he does not believe the employer understands New Hampshire law.

The employer testified that they paid for the claimant's work through the last day. They also paid out all of his accrued vacation time. Upon a request for a clarification from the New Hampshire Department of Labor, the employer learned that the entire pay period had to be paid. The employer did this. The employer maintains that they were not willful in their action, they only misinterpreted the law.

FINDINGS OF FACT

RSA 275:44 IV reads: "If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10% of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition."

This is the section of the law that allows for an employee to seek liquidated damages up to the amount of the Wage Claim. This request asks the Hearing Officer to find that the employer was willful and did not have good cause for their action.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that the request for liquidated damages is invalid. The claimant has to show that the employer did willfully and without good cause delay wages due to the claimant. He did not bear this burden of proof.

The employer was credible in their testimony that they paid out all that they thought was due and owing. Upon being advised of the law, they made a payment to bring the wages up to the intent of the law.

It is found by the Hearing Officer that the action of the employer was not willful and that they had good cause for doing what they did.

The request for liquidated damages is denied.

DECISION AND ORDER

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

/s/

Thomas F. Hardiman
Hearing Officer

Date of Decision: July 17, 2014

Original: Claimant
cc: Employer

TFH/cag